IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.5867 OF 2006

Shri Rajkumar Siddheshwar Pailwan, .. Petitioner
Vs
Bhalchandra Siddheshwar Pailwan and ors Respondents

Mr A.M.Shete, for the petitioner.
Mr A.A.Joshi, for respondent no.1.
Ms Prachi Nimbalkar, i/b Mr K.Y.Mandlik, for respondent nos 2 and 3.

CORAM : D.B.BHOSALE,J.
DATE : 10.10.2006
PC:

1. Heard the learned counsel for the parties.

2. Rule. Returnable forthwith. The learned counsel, waive service for the respondents. By consent, rule is heard forthwith.

3. The petitioner in the present writ petition under Article 227 of the Constitution of India has impugned the order dated 10.7.2006, which reads thus;

> "Heard, perused the application and the say. The defendant no.4 was duly served with summons on 28.7.2004 vide Ex.12. No W.S.order was passed against him on 1.11.2004. The reasons stated in the application is not just and plausible or exceptional to set aside No W.S. order passed against the defendant no.4. Considering the inordinate and inprecedentary delay in filing the W.S. I make no bones to rejecting the

application.

Application stands rejected."

4. The learned counsel for the parties are ad idem that in the suit even the issues have not yet been framed. In my opinion, therefore, no prejudice whatsoever will be caused to the plaintiff if "No W.S." Order is set aside and the petitioners-defendants are allowed to file their written statement by condoning the delay for the reasons stated in the application subject to payment of cost. The suit is filed for declaration and injunction. In the circumstances, I pass the following order.

(a) The order dated 10.7.2006 impugned in the present writ petition is quashed and set aside. "No W.S." Order" dated 1.11.2004 is also quashed and set aside. Delay is condoned subject to payment of cost of Rs.500/- to be paid to the respondents-plaintiffs. The written statement, which is already placed on record with the application dated 10.7.2006, be taken on file and the trial Court shall proceed with hearing of the suit on merits.

(b) Rule is accordingly disposed of.

(D.B.BHOSALE,J.)